

BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE COMPLAINT
OF BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND HUALAPAI
INDIAN RESERVATIONS.

DOCKET NO. E-01750A -05-0579

**MOHAVE'S NOTICE OF REMOVAL
OF STATE DECLARATORY
JUDGMENT ACTION TO THE U.S.
DISTRICT COURT**

Mohave Electric Cooperative, Inc. ("Mohave"), by and through its undersigned counsel, hereby notifies the Arizona Corporation Commission ("Commission") that the United States has removed the Declaratory Judgment Action Mohave filed on December 9, 2005 in the Arizona Superior Court for Maricopa County (Case No. CV2005-018954) to federal court.

As the Commission may remember, Mohave's Declaratory Judgment Action seeks a court determination that the 1982 Contract between BIA and Mohave, providing electric service to the Hualapai and Havasupai Indian Reservations, is no longer valid or enforceable. Mohave filed the action in view of Arizona precedent that hold the courts, not the Commission, is the proper forum to resolve contract issues. *See, e.g., Trico Electric Cooperative, Inc. v. Ralston*, 67 Ariz. 358 (1948); *Campbell v. Mountain States Telephone & Telegraph Co.*, 120 Ariz. 426, 586 P.2d 987 (App. 1978); and *General Cable Corporation v. Citizens Utilities Company*, 27 Ariz. App. 381, 555 P.2d 350 (1976).

1 On January 5, 2006, the United States filed notice that it was removing the state
2 court action to the U.S. District Court for the District of Arizona, pursuant to 28 U.S.C. §§
3 1441, 1442(a)(1) and 1446. A copy of the United States' notification is appended hereto as
4 Exhibit 1, for the Commission's information.

5 Mohave expects the federal district court to take this matter up shortly and to
6 determine whether a valid contract exists or has expired. Once there is a final decision from
7 the federal court on this declaratory judgment action, Mohave anticipates the keystone issue
8 for this controversy – whether Mohave must continue to provide electric service in
9 accordance with the terms of a long-expired contract – will be resolved. Any lingering issues
10 for the Commission's consideration can then be decided.

11 In view of this pending matter before the federal district court, Mohave renews
12 its request that this Commission refrain from making any ruling on matters pending before it
13 in order to promote judicial economy.

14 Dated this 9th day of February, 2006.

15
16 CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

17
18 By: 

19 Michael A. Curtis
20 William P. Sullivan
21 Larry K. Udall
22 Nancy A. Mangone
23 2712 North 7th Street
24 Phoenix, Arizona 85006-1090
25 Attorneys for Mohave Electric Cooperative, Inc.

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 10th day of February 2006, I caused the foregoing

3 document to be served on the Arizona Corporation Commission by delivering the original and
4 thirteen (13) copies of the above to:

5
6 Docket Control Division
7 ARIZONA CORPORATION COMMISSION
8 1200 West Washington Street
9 Phoenix, Arizona 85007

10 Copies of the foregoing hand delivered/mailed
11 this 10th day of February, 2006 to:

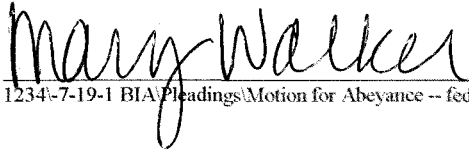
12 JEFF HATCH-MILLER, CHAIRMAN
13 COMMISSIONER WILLIAM A. MUNDELL
14 COMMISSIONER MARC SPITZER
15 COMMISSIONER MIKE GLEASON
16 COMMISSIONER KRISTIN K. MAYES
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Teena Wolfe, Esq.
21 Administrative Law Judge, Hearing Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Keith Layton, Esq.
Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Mark J. Wenker
2 U.S. Attorney's Office
3 40 North Central, Suite 1200
4 Phoenix, AZ 85004-4408
5 Attorney for the BIA

6 
7

1234-7-19-1 BIA Pleadings\Motion for Abeyance -- federal court(3).doc

EXHIBIT 1

1 PAUL K. CHARLTON
United States Attorney
District of Arizona

2 Mark J. Wenker
3 Assistant U.S. Attorney
Arizona State Bar No. 018187
Two Renaissance Square
4 40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
5 Telephone: (602) 514-7500
Facsimile: (602) 514-7760
E-Mail: Mark.Wenker@usdoj.gov
6 Attorneys for defendant Bureau of Indian Affairs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

7
8
9 Mohave Electric Cooperative Inc., an
Arizona corporation,

10 Plaintiff,

11 v.

12 Bureau of Indian Affairs,

13 Defendant.

NOTICE OF REMOVAL

(From Maricopa County Superior
Court, No. CV2005-018954)

14 Defendant United States of America, Bureau of Indian Affairs ("BIA"), by
15 undersigned counsel and pursuant to 28 U.S.C. §§ 1441, 1442(a)(1) and 1446, gives notice of
16 the removal of this action to this Court for the following reasons:

17 1. The BIA is a defendant in the above-captioned civil action pending in the
18 Maricopa County Superior Court, entitled *Mohave Electric Cooperative v. Bureau of Indian*
19 *Affairs*, case no. CV2005-018954. No trial has been scheduled and no final disposition has
20 occurred in the Maricopa County Superior Court action.

21 2. The above-captioned action was commenced against the BIA by filing a
22 Complaint on or about December 9, 2005, and received by the undersigned on December 12,
23 2005. Copies of all process and pleadings that have been received by the undersigned are
24 attached as Exhibit A. The undersigned has not received a summons and does not believe the
25 BIA has been served.
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27
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1 3. The above-captioned action is one which may be removed pursuant to 28
2 U.S.C. § 1441(a), 1442(a)(1) because this Court has original jurisdiction pursuant to 28
3 U.S.C. § 1446.

4 4. Defendant is not required to file a bond pursuant to 28 U.S.C. § 2408.

5
6 DATED this 5th day of January, 2006

7 PAUL K. CHARLTON
8 United States Attorney
 District of Arizona

9 /s Mark J. Wenker /

10 MARK. J. WENKER
11 Assistant U.S. Attorney

12
13 CERTIFICATE OF SERVICE

14 I hereby certify that on January 5, 2006, I electronically transmitted the attached
15 document to the Clerk's Office using the CM/ECF System for filing, and served a copy of it d
exhibit by first class mail, postage prepaid on plaintiff at the following address:

16 Christopher S. Coleman
17 Perkins Coie Brown & Bain
18 2901 N. Central Avenue
P.O. Box 400
Phoenix, Arizona 85001-0400

19 /s Mark J. Wenker
20 _____
21
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23
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27
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2006 JAN 10 10:00 AM
U.S. DISTRICT COURT
DISTRICT OF ARIZONA